

§ 123.75

19 CFR Ch. I (4–1–07 Edition)

(4) A determination is made that the grant of LBCIP privileges would endanger the revenue or security of the Customs area.

(b) *Appeal of determination.* Carrier-applicants not selected to participate in the LBCIP and who wish to appeal the decision shall either:

(1) Appeal the adverse determination in accordance with the appeal procedure set forth in § 123.75(c) of this part; or

(2) Cure any deficiency in the first application by submitting a new application to the port director who denied the previous application after waiting 60 days from the date of issuance of the first determination.

§ 123.75 Notice of revocation; appeal of decision.

(a) *Revocation.* The port director may immediately revoke a carrier's participation in the LBCIP and cancel the written agreement for any of the following applicable reasons:

(1) The selection and written agreement were obtained through fraud or the misstatement of a material fact by the carrier;

(2) The carrier, a corporate officer, or other person the port director determines is exercising substantial ownership or control over the carrier operation or corporate officer, is indicted for, convicted of, or has committed acts which would constitute any felony or misdemeanor under United States Federal or State law. In the absence of an indictment, conviction, or other legal process, the port director must have probable cause to believe the proscribed acts occurred;

(3) The carrier-participant allows an unauthorized person or entity to use its LBCIP certificate or other approved form of identification;

(4) The carrier-participant misuses authorized conveyances;

(5) The carrier-participant refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation;

(6) The carrier-participant fails to operate in accordance with the terms of the written agreement; or

(7) Continuation of LBCIP privileges would endanger the revenue or security

of the Customs area in the judgment of the port director.

(b) *Notice.* When a decision revoking participation has been made, the port director shall notify the carrier-participant of the decision in writing. The notice of revocation shall clearly state the reason(s) for revocation and recite the applicant's appeal rights under paragraph (c) of this section.

(c) *Appeal of decision.* Carrier-participants that receive a notice of revocation and who wish to appeal the decision shall file a written appeal with the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, Washington, DC 20229, within 10 calendar days of receipt of the notice. The appeal shall be filed in duplicate and shall set forth the carrier's responses to the grounds specified by the port director in the notice. Within 30 working days of receipt of the appeal, the Assistant Commissioner, or his designee, shall make a determination regarding the appeal and notify the applicant in writing.

§ 123.76 Authorization by Customs for participants to use certain drivers.

(a) *Responsibilities of LBCIP participants.* An LBCIP participant is required, pursuant to § 123.73 of this part, to list the drivers designated to transport merchandise into the United States for the carrier to enable Customs to conduct background checks. An LBCIP participant is also required, pursuant to § 123.72 of this part, to conduct, to the extent allowed by law, employment and criminal history checks on all personnel designated to participate in the LBCIP; these personnel include drivers.

(b) *Authorization of drivers by Customs.* Customs may not approve a carrier for participation in the LBCIP if it determines that there is evidence that a driver designated by a carrier has been involved in criminal or dishonest conduct or it may request that the carrier not use that driver before approving the carrier for participation. Once a carrier has been accepted in the LBCIP, Customs may determine to cancel a particular driver's authorization to transport merchandise for a LBCIP carrier for the reasons set forth in paragraph (c) of this section.